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12 Attorneys for USA Commercial Mortgage Company

13 **UNITED STATES BANKRUPTCY COURT**

14 **DISTRICT OF NEVADA**

15 In re: USA COMMERCIAL MORTGAGE COMPANY, Debtor.	16 Case No. BK-S-06-10725 LBR Case No. BK-S-06-10726 LBR Case No. BK-S-06-10727 LBR Case No. BK-S-06-10728 LBR Case No. BK-S-06-10729 LBR
17 In re: USA CAPITAL REALTY ADVISORS, LLC, Debtor.	18 Chapter 11 Jointly Administered Under Case No. BK-S-06-10725 LBR
19 In re: USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, Debtor.	20
21 In re: USA CAPITAL FIRST TRUST DEED FUND, LLC, Debtor.	22
23 In re: USA SECURITIES, LLC, Debtor.	24
25 Affects: <input type="checkbox"/> All Debtors <input checked="" type="checkbox"/> USA Commercial Mortgage Company <input type="checkbox"/> USA Securities, LLC <input type="checkbox"/> USA Capital Realty Advisors, LLC <input type="checkbox"/> USA Capital Diversified Trust Deed Fund, LLC <input type="checkbox"/> USA Capital First Trust Deed Fund, LLC	26 REPLY IN SUPPORT OF MOTION TO SELL UNDER SECTION 363 ALL COMMERCIAL MORTGAGE ASSETS OF DEBTOR USA COMMERCIAL MORTGAGE COMPANY IN THE PLACER VINEYARDS LOANS TO COMPASS USA SPE, LLC [AFFECTS DEBTOR USA COMMERCIAL MORTGAGE COMPANY]
27	28

Hearing Date: March 27, 2007
Hearing Time: 9:30 a.m.

1 USA Commercial Mortgage Company (“USACM”), by and through its counsel, hereby
 2 files its reply in support of the *Motion to Sell Under Section 363 All Commercial Mortgage Assets*
 3 *of Debtor USA Commercial Mortgage Company in the Placer Vineyards Loans to Compass USA*
 4 *SPE, LLC* [Docket No. 3037] (the “Motion”), requesting that the Court authorize USACM
 5 pursuant to 11 U.S.C. §§ 363(b)(1) and 363(f) to sell to Compass USA SPE, LLC, successor in
 6 interest to Compass Partners, LLC (“Compass”), the Placer Vineyard Commercial Mortgage
 7 Assets (as defined in the Motion) (hereinafter, the “PVCM Assets”) to USACM that relate to the
 8 Placer Vineyard Loans,¹ subject to higher and better offers.

9 I. USACM FILED THE MOTION AS AN ACCOMMODATION

10 The “Effective Date” of the Debtors’ Third Amended Joint Plan of Reorganization (the
 11 “Plan”) occurred on March 12, 2007. Just prior to the Effective Date, on March 9, 2007, as an
 12 accommodation to and with the approval of the Official Committee of Unsecured Creditors of
 13 USA Commercial Mortgage Company (the “UC Committee”), USACM filed the Motion to
 14 approve a sale of the PVCM Assets to Compass at a price that was agreed to by the UC
 15 Committee and Compass. A condition in Compass’s offer to purchase the PVCM Assets was that
 16 the assets would be transferred by the USACM debtor “free and clear” pursuant to Section 363(f)
 17 of the Bankruptcy Code. Pursuant to the Plan, the USACM Liquidating Trust (the “USACM
 18 Trust”) formally came into existence on the Effective Date and the UC Committee was disbanded.
 19 Any consideration obtained from the sale of the PVCM Assets will inure to the beneficiaries of the
 20 USACM Trust, which are the general unsecured creditors of USACM. USACM entered into the
 21 agreement with Compass, as set forth in the Motion and noticed to the Direct Lenders of the
 22 Placer Vineyard Loans and other interested parties, and noticed up the sale with the consent and
 23 support of the UC Committee. If the USACM Trust, being advised by the same counsel, has now
 24 changed course, USACM still believes that the original decision made by the UC Committee is in
 25 the estate’s best interest and asks that the hearing go forward, an auction be held, and the Court
 26 then rule on whether to approve the sale resulting from the auction for the reasons set forth herein.

27
 28 ¹ Unless otherwise defined herein, capitalized terms shall have the same meaning has set forth in the Motion.

1 There is simply no guarantee that an auction will occur after March 27, 2007, since Compass may
 2 revoke its offer and the opportunity for an auction may disappear, leaving less value for creditors
 3 and possibly less protection for the interested Direct Lenders. Furthermore, as stated below,
 4 USACM believes that the PVCM Assets need to be transferred promptly to a loan servicer that
 5 can advance additional funds in order to preserve value for the USACM creditors and for the
 6 Direct Lenders in the Placer Vineyards Loans.

7 **II. SUBSTANTIAL GROUNDS EXIST FOR AN EXPEDITED HEARING**

8 As set forth in the *Declaration of Robert E. Koe in Support of Motion to Sell Under*
 9 *Section 363 All Commercial Mortgage Assets of Debtor USA Commercial Mortgage Company in*
 10 *the Placer Vineyards Loans to Compass USA SPE, LLC* [Docket No. 3242] (the “Koe
 11 Declaration”), there is a real and substantial risk that if the servicing for the Placer Vineyards
 12 Loans is not resolved immediately, with a servicer in place with the funding ability to advance the
 13 unpaid real property taxes for the Placer Vineyards Project and the Borrower’s share of the
 14 property owners association costs, it appears likely that the Placer Vineyards Project will have
 15 value for the immediate future only as undeveloped farm land and the market value of the Placer
 16 Vineyards Project will be reduced dramatically. Koe Declaration, ¶16. Additionally, Compass
 17 has made abundantly clear to USACM and the USACM Trust that Compass’s offer is expressly
 18 conditioned upon immediate approval thereof and Compass has reserved the right to revoke its
 19 offer. *Declaration of David Blatt of Compass Financial Partners, LLC in Support of Debtors’*
 20 *Motion to Sell Under Section 363 All Commercial Mortgage Assets of Debtor USA Commercial*
 21 *Mortgage Company in the Placer Vineyards Loans to Compass USA SPE, LLC* [Docket No. 3244]
 22 (the “Blatt Declaration”). The Placer Vineyards Project has been adequately marketed (as set
 23 forth below), as evidenced further by the fact that USACM has now received a competing offer for
 24 \$450,000 from Sierra Liquidity for the PVCM Assets.

25 Accordingly, USACM believes that the objecting parties’ desire to continue this matter
 26 until a later date is not a viable option under the circumstances. There is a substantial risk that a
 27 further delay may prompt Compass to withdraw its \$300,000 offer and decline the opportunity to
 28 top the current Sierra Liquidity offer of \$450,000. Further, Sierra Liquidity may decide to

1 withdraw its offer if the sale is extended and cannot be closed promptly. Also, on April 10, 2007,
 2 an additional \$170,000 in real property taxes on the Placer Vineyards Project will become due,
 3 Koe Declaration ¶ 12, and the property owners association that has been working with Placer
 4 County to obtain approval of the development has made demand upon the Borrower for the
 5 Borrower to pay approximately \$375,000 for the Borrower's share of costs incurred. Koe
 6 Declaration, ¶ 13. USACM has no ability to meet these critical funding shortfalls. The USACM
 7 Trust will not advance the necessary funds needed to adequately protect the value of the Placer
 8 Vineyard Project. While this fact alone provides sufficient reason to sell the PVCM Assets, rather
 9 than transfer them to the USACM Trust, it is not simply the need for a new loan servicer to benefit
 10 the Direct Lenders on the Placer Vineyards Loans that warrants the relief requested in the Motion
 11 and obtaining that relief on an expedited basis. USACM is also attempting to maximize value for
 12 creditors by selling the PVCM Assets for the highest and best offer possible under the
 13 circumstances.

14 **III. THE PLACER VINEYARDS PROJECT HAS BEEN APPROPRIATELY MARKETED**

15 Because the Placer Vineyard Loans were not included in the assets sold to Compass under
 16 the Compass APA, following Bankruptcy Court approval of the Compass APA, USACM
 17 undertook efforts to market the Placer Vineyard Commercial Mortgage Assets. Koe Declaration,
 18 ¶8. As set forth in the Koe Declaration, Mr. Koe contacted or attempted to contact the following
 19 potential buyers to determine if they were interested in purchasing the PVCM Assets: Racebrook,
 20 Silver Point, Commercial Funding, LLC ("Commercial Funding"), Sierra Liquidity Fund, LLC
 21 ("Sierra Liquidity"), and Compass. However, Racebrook declined to make an offer, and Silver
 22 Point did not return Mr. Koe's phone calls. James Glockner on behalf of Commercial Funding
 23 initially told Mr. Koe that Commercial Funding, LLC, would agree to take over the servicing
 24 responsibilities for the Placer Vineyards Loans but would not pay anything for the PVCM Assets.
 25 Mr. Koe was informed that Commercial Funding was considering presenting a bid for the PVCM
 26 Assets, but it has not done so. Compass submitted the offer of \$300,000 that was negotiated by
 27 the UC Committee and USACM. Compass has confirmed its understanding that the Prepaid
 28 Interest on the Placer Vineyards Loans is not being sold as part of the Placer Vineyards

1 Commercial Mortgage Assets and that Compass will be obligated to continue to collect such
 2 Prepaid Interest with regard to the Placer Vineyards Loans pursuant to the terms of the Compass
 3 APA. James Riley on behalf of Sierra Liquidity presented a bid for the PVCM Assets for
 4 \$450,000, which also recognizes that Sierra Liquidity as servicer must collect for the benefit of the
 5 USACM Trust any Prepaid Interest on the Placer Vineyards Loans. Koe Declaration, ¶ 9.
 6 Accordingly, USACM has taken appropriate measures to market the Placer Vineyards
 7 Commercial Mortgage Assets to obtain the highest and best offer possible under the circumstances
 8 confronting USACM and the USACM Trust.

9 **IV. THE PLACER VINEYARDS COMMERCIAL MORTGAGE ASSETS ARE ASSETS OF**
 10 **THE USACM BANKRUPTCY ESTATE**

11 An objection to the Motion was filed by Debt Acquisition Company of America V
 12 (“DACA”). DACA’s assertion that the PVCM Assets are not property of the bankruptcy estate
 13 but instead are vested in the USACM Trust is incorrect. On March 9, 2007 the Bankruptcy Court
 14 entered an order clarifying the Plan to “provide that the transfer of the Placer Vineyards
 15 Commercial Mortgage Assets from USACM to the USACM Trust is not automatic on the
 16 Effective Date of the Confirmed Plan, and instead will not be effective under the Confirmed Plan
 17 until the Motion has been heard and ruled upon by this Court....” *Stipulation and Order*
 18 *Postponing the Transfer of USACM’s Rights and Assets Relating to the Placer Vineyards Loans to*
 19 *the USACM Trust*, p. 4 [Docket No. 3031]. Accordingly, the PVCM Assets remain property of the
 20 USACM bankruptcy estate for a limited period until the Motion is heard and ruled upon.

21 **V. THE MOTION WAS PROPERLY NOTICED**

22 DACA also erroneously asserts that the Notice of Hearing was the only document served
 23 on the Direct Lenders and that USACM failed to adequately disclose the relief sought in the
 24 Motion. However, the Court’s docket establishes that on March 9, 2007, as ordered by the
 25 Bankruptcy Court, each of the Direct Lenders on the Placer Vineyard Loans, and other parties who
 26 had requested notice, were served with the:

27 (1) Stipulation and Order Postponing the Transfer of USACM’s Rights and Assets
 28 Relating to the Placer Vineyards Loans to the USACM Trust [Docket No. 3031];

- (2) Motion to Sell Under Section 363 all Commercial Mortgage Assets of Debtor USA Commercial Mortgage Company in the Placer Vineyards Loans to Compass USA SPE, LLC [Docket No. 3037]; and
- (3) Declaration of Thomas J. Allison in Support of Motion to Sell Under Section 363 all Commercial Mortgage Assets of Debtor USA Commercial Mortgage Company in the Placer Vineyards Loans to Compass USA SPE, LLC [Docket No. 3038]

See Certificate of Mailing [Docket No. 3087]. The Notice of Hearing was subsequently served on each Direct Lender in the Placer Vineyard Loans as well as other parties who had requested notice on March 15, 2007. *See Certificate of Mailing* [Docket No. 3126]. As such, DACA's contention is simply erroneous.

VI. THE BENEFICIARIES OF THE USACM TRUST ARE THE REAL PARTIES-IN-INTEREST

As mentioned above, USACM filed and is moving forward with the Motion as an accommodation to the UC Committee and now the USACM Trust. Undoubtedly, with a confirmed Plan that became effective on March 12, 2007, the beneficiaries of the USACM Trust, as well as direct lenders on the Placer Vineyards Loan, are the ultimate beneficiaries of the Motion and are the parties in interest that will be harmed by delay in identifying a new loan servicer for the Placer Vineyards Loans. Nevertheless, USACM in its business judgment believes that it is in the best interest of these parties in interest to have the new servicer identified and approved by the Court at the hearing scheduled for March 27, 2007.

Dated this 26th day of March, 2007.

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